

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**MARIETTA MEMORIAL HOSPITAL,
an Ohio Corporation, *et al.*,**

Plaintiffs,

v.

Civil Action No. 2:16-cv-08603

**WEST VIRGINIA HEALTH CARE
AUTHORITY,**

Defendant.

AFFIDAVIT OF BENJAMIN L. BAILEY

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

Benjamin L. Bailey, deposes and states upon his oath the following:

1. I am an attorney licensed to practice law in the State of West Virginia. I have been practicing in this State since 1980, and I am the managing partner in Bailey & Glasser, LLP, a Charleston, West Virginia based law firm with offices in nine other states. I am a former law clerk for the Honorable John T. Copenhaver, Jr., and I have extensive experience in federal court litigation, including the handling of Civil Rights cases under 42 U.S.C. § 1983.

2. I make this affidavit at the request of Webster J. Arceneaux, III, knowing that he will submit the same to a court of law in support of a motion for attorney's fees and costs. All statements and opinions made in this Affidavit are based upon my personal knowledge and experience.

3. I am familiar with Mr. Arceneaux, and his firm, Lewis, Glasser Casey & Rollins, PLLC. I am also familiar that his firm employs partners and associates, and the quality of the firm's work on behalf of its clients. Mr. Arceneaux has litigated cases with other attorneys in my firm and I am aware that he has served as a mediator in several consumer cases and that he has acted as a discovery commissioner in cases for my firm. In all these settings, I have found the skills and caliber of work of Mr. Arceneaux and his firm to be very high.

4. Based upon my education, training, and experience practicing law in this State and across the country for thirty-seven (37) years, I am also familiar with the type of costs incurred and the amount of attorney's fees associated with civil litigation in the State of West Virginia and elsewhere.

5. I currently bill for my legal services at the rate of \$750.00 per hour. I may vary my rate depending on the type of work, the location, and the client. Looking at cases similar to this one I have handled in the past, in *Wolfe v Green*, Civil Action No. 2:08-01023 (S.D. W.Va. 2010), I was awarded an hourly rate seven years ago of \$325.00 for a civil rights case of excessive force filed under 42 U.S.C. § 1983 and other claims for relief. Before that, in *Citizens Against Pollution v. Ohio Power Company*, Civil Action No. C2-04-CV-371 (S.D. Ohio 2007), I was awarded \$390.00 for a RCRA case involving complex federal environmental issues, and a power plant in Ohio whose emissions were falling across the river into West Virginia.

6. Civil rights and constitutional cases, such as this case involving the dormant commerce clause, are difficult and warrant a fee award at full and fair hourly rates, or more. If not, competent attorneys willing to represent plaintiffs in such important, risky and potentially expensive cases will become increasingly rare.

7. Based on the foregoing, and based on my knowledge of Mr. Arceneaux's skill, ability, training, experience and reputation, I believe that his request for an hourly rate of \$325-350.00 per hour is well within the reasonable range of prevailing market rates in this area, if not actually a bit low. I am aware of other experienced lawyers in West Virginia whose rates, for cases like this in West Virginia in the last few years, have been between \$325.00 and \$425.00 per hour.

8. Currently, my firm bills our younger associates in West Virginia at hourly rates based on their experience from \$225.00 - \$325.00.

9. For all of these reasons, I further believe that the request for an hourly rate of \$350 for Mr. Casto and \$275.00 for Ms. Raupp is within the reasonable range of prevailing market rates in this area.

10. If I can amplify anything stated herein, I am willing to do so.

AND FURTHER AFFIANT SAITH NAUGHT.


Benjamin L. Bailey

Taken, subscribed and sworn to before me this 8th day of December 2017.

My Commission expires: 11/22/20




Notary Public